Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	**)**	
	)	
Review of the Emergency Alert System	**)**	EB Docket No. 04-296

Petition for Partial Reconsideration and Clarification

XM Radio Inc. ("XM"), one of the two providers of Satellite Digital Audio Radio Service ("SDARS" or "satellite radio") in United States, hereby files this Petition for Partial Reconsideration and Clarification of the Commission's decision in the above-referenced proceeding regarding the Emergency Alert System (the "EAS").[1] XM applauds the Commission's efforts to improve the EAS by expanding its reach to include new technologies, such as SDARS. Indeed, XM filed Comments in this proceeding committing to voluntarily provide its subscribers with both national EAS alerts on all of its channels and state and local EAS alerts for regions covered by an XM Instant Traffic, Weather & Alert channel where XM receives alerts from originating EAS sources. XM files this Petition to ask the Commission for narrowly-tailored relief limited to the testing of national EAS alerts and the transmission of EAS codes and attention signals by satellite radio operators. As a provider of the only truly national, multi-channel audio communications medium, XM urges the Commission to afford satellite radio operators the flexibility to test and transmit EAS alerts consistent with their unique system attributes.

Background

XM. XM is the leading provider of satellite radio service in the world today. XM was one of two winning bidders in the satellite radio auction held in April 1997. Since its licensing,

[1] *See Review of the Emergency Alert System, First Report and Order and Further Notice of Proposed Rulemaking*, EB Docket No. 04-296, FCC 05-191 (rel. November 10, 2005) ("*Order*").

XM has spent nearly three billions dollars constructing and operating multiple satellites, deploying in-band terrestrial repeaters in some markets to fill gaps in satellite coverage, and developing and designing consumer receivers that enable excellent reception.

As the Commission has repeatedly recognized, this new consumer-based mass media service promises enormous public interest benefits for the American public.[2] In the 1997 *SDARS Order*, the Commission recognized that satellite radio would provide multiple channels of audio programming distributed to a national audience, thereby increasing the variety of audio programming available to the listening public and serving listeners in areas of the country that have been underserved. *SDARS Order* ¶ 1. XM has fulfilled the Commission's vision. XM currently offers 160 channels of high-quality, continuous, multi-channel audio service throughout the contiguous United States--from the downtown urban cores to the most rural and remote parts of the United States. These 160 channels are originated from XM's headquarters in Washington, DC and then retransmitted nationwide using XM's satellites and terrestrial repeaters. Unlike any other communications medium, satellite radio delivers the same programming to every subscriber receiver throughout the nation.

NPRM. In August 2004, the Commission issued a Notice of Proposed Rulemaking ("*NPRM*") requesting comment on whether satellite radio operators, among others, should be required to be part of the EAS.[3] For help in assessing this issue, the Commission asked whether the benefits of extending EAS obligations outweigh the burdens. *NPRM* ¶ 29. In October 2004, XM submitted Comments explaining how it provides subscribers with access to critical

[2] *See, e.g., Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band, Report and Order, Memorandum Opinion and Order*, 12 FCC Rcd 5754, ¶ 1 (1997) ("*SDARS Order*").

[3] *See Review of the Emergency Alert System, Notice of Proposed Rulemaking,* EB Docket No. 04-296, FCC 04-189 (rel. August 12, 2004) ("*NPRM*"), ¶ 29.

emergency information through its twenty-one Instant Traffic, Weather & Alert channels as well as through a separate public safety/emergency alert channel ("XM Emergency Alert") dedicated to providing information before, during, and after natural and man-made disasters that impact any part of the United States.[4] As an additional measure to further promote public safety, XM committed to voluntarily become part of the EAS by transmitting national EAS alerts on all of its channels and state and local EAS alerts on the appropriate Instant Traffic, Weather & Alert channels where XM receives alerts from originating EAS sources. *XM Comments* at 8-11. With respect to testing of national EAS alerts, XM proposed to test its EAS equipment on a weekly and monthly basis on its XM Emergency Alert channel, rather than performing these tests on every one of its channels. *Id.* at 9. XM noted that performing tests on every channel would not only be unnecessary, but also unduly disruptive to XM's subscribers. *Id*.

Order. On November 10, 2005, the Commission released its *Order* in this proceeding which, among other things, requires SDARS licensees to be able to transmit national level EAS alerts on all channels by December 31, 2006. *See Order* ¶¶ 43-48. With respect to testing, the *Order* appears to require SDARS licensees to test their ability to receive and distribute EAS messages on both a weekly and monthly basis, in the same manner required of other EAS participants, and to keep records of all tests. *Id*. ¶ 43.[5] The Commission rejected XM's proposal to test its EAS equipment on a weekly and monthly basis on only its XM Emergency Alert channel, stating that the purpose of the testing requirement is to test "not only the EAS

[4] *See* Comments of XM Radio Inc., EB Docket No. 04-296 (October 29, 2004), at 3-6 ("*XM Comments*").

[5] While the text of the *Order* requires satellite radio operators "to test their ability to receive and to distribute EAS messages in the same manner required of other EAS participants," which presumably implies monthly as well as weekly tests, the rule as adopted is ambiguous as to whether it requires satellite radio operators to perform both weekly and monthly testing. *Compare Order* ¶ 43 *with* 47 C.F.R. § 11.61(a)(2)(i)(D). XM assumes that the Commission intended satellite radio operators to perform both weekly and monthly tests.

participant's ability to receive the message from the source it monitors, but also the ability of the participant to disseminate an alert to its entire audience." *Id*. In contrast, the Commission required Direct Broadcast Satellite ("DBS") operators to transmit EAS tests on only a monthly basis and on only 10 percent of their channels, explaining that "requiring a DBS provider to conduct its weekly and monthly test on all channels simultaneously may pose problems." *Id*. ¶ 57.

Discussion

Testing. As an initial matter, XM reiterates that its system is fully capable of transmitting a national level EAS message to every one of its subscribers and on every one of its channels. In the event that a national level alert is delivered, XM is equipped with a manual switching device that can force every XM channel to the emergency audio alert delivered by the President. XM is fully capable of distributing this national level alert today. XM's concern with the *Order* is narrowly focused on the issue of testing of EAS equipment. As discussed below, the testing regime for satellite radio operators as adopted is unduly burdensome, confusing to subscribers, and fails to meet the intent of the testing requirement given the unique attributes of satellite radio systems.

The *Order* requires XM to transmit an EAS test on a weekly and monthly basis on every one of its channels. *See Order* ¶ 43. While the Commission recognized that such a requirement would be burdensome for DBS operators (*id*. at ¶57), this requirement is also unnecessarily confusing for satellite radio subscribers and unduly onerous for satellite radio operators for three main reasons.

First, the fact is that the only time XM will ever transmit an EAS alert over all of its channels would be in the unprecedented event of a national level EAS message. Requiring XM

to test for a national level EAS message on a weekly and monthly basis conveys the wrong impression to satellite radio subscribers that EAS alerts will be transmitted frequently over satellite radio systems when in fact a national level EAS alert has never been activated.[6] In fact, it is our understanding that the National Emergency Action Notification ("EAN") tests have always been closed circuit tests, and the final link between broadcast stations and the public has never been tested during a National test. Moreover, weekly and monthly tests on all XM channels will mislead subscribers to believe that satellite radio operators transmit state and local EAS alerts on all channels, when in fact state and local EAS alerts will only be transmitted on those XM Instant Traffic, Weather & Alert channels on which XM has informed subscribers that it will offer state and local EAS messages. Indeed, the Commission recognized in the *Order* that transmission of EAS alerts over every XM channel would be needlessly disruptive and confusing to satellite radio subscribers.[7]

Second, weekly and monthly EAS tests on every channel will completely preempt XM programming causing disruptions to XM's subscribers in a manner unlike any other media.[8]

---

[6] Conversely, for other providers of multichannel programming, such as cable systems, transmission of EAS alerts on a monthly and weekly basis over every channel may be appropriate and will not be unnecessarily confusing to subscribers. Because these systems are locally-based, they will transmit state and local EAS alerts over every channel. Because state and local EAS alerts are relatively common compared to the national level EAS message, weekly and monthly testing of the EAS system will not be misleading to subscribers.

[7] *Order* ¶ 47 ("[T]ransmission of local emergency information on all channels, which would reach all affected listeners, would also reach – and inconvenience – millions of unaffected listeners nationwide as well. If listeners are deluged with too many emergency messages, most of which are inapplicable to them, then emergency messages may well lose their impact.").

[8] The Commission in the past has tried to minimize the interruption of programming that occurs as a result of EAS testing. *See Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System, Report and Order*, 25 CR 1504 (2002), ¶ 48 (increasing the time for retransmitting the required monthly test from 15 minutes to 60 minutes from the time of receipt because longer relay window would provide EAS participants more flexibility and reduce the risk of program disruptions).

While some multi-channel, video programming providers, specifically large cable systems, are also required to distribute EAS tests on every channel, these testing requirements are far less onerous than those imposed on satellite radio operators for two reasons. First, when an EAS alert is transmitted over these systems, the system is required to transmit only a video crawl which does not completely interrupt the video programming.[9] By contrast, an interruption of audio programming necessarily preempts the entirety of the content being delivered to the consumer. Second, cable systems are not required to transmit a video message at all during the weekly tests, thereby avoiding interruption of the core video programming the system offers.[10] DBS operators are subject to even less burdensome testing requirements than cable operators, having to transmit only a monthly test and only on 10 percent of their channels with no requirement to conduct weekly tests.[11] The *Order* does not provide satellite radio providers with similar flexibility, opting instead to require satellite radio operators to completely preempt every one of their channels on a monthly and weekly basis.

Third, many of the programs XM offers, such as C-Span Radio, the BBC World Service, and live concerts and sporting events, consist of feeds from third-party sources which XM cannot simply pause for an EAS test and then restart once the test is completed. Rather, programming on these channels that is transmitted during the course of an EAS test will be completely preempted, never to be heard again by subscribers. While a local radio station with a single channel can plan its weekly EAS test to occur at a convenient time to avoid interrupting programming, such as a commercial break, XM does not have this luxury. With 160 channels,

[9] 47 C.F.R. § 11.51(h)(3).

[10] 47 C.F.R. § 11.61(a)(2)(iv).

[11] 47 C.F.R. §§ 11.61(a)(1)(ii); 11.61(a)(2)(ii) (as adopted in the *Order*).

XM would face an enormous logistical hurdle to perform weekly and monthly EAS tests without significantly interrupting programming.[12]

As a result, the Commission's EAS testing regime for satellite radio operators results in the unprecedented total interruption of multi-channel content on a weekly and monthly basis. Unlike video programming providers, which can transmit only a video crawl, and radio broadcasters, which can plan tests to avoid interrupting programming, the testing regime as adopted in the *Order* for satellite radio operators will completely preempt all 160 channels of nationwide programming every week.[13]

As an alternative to burdening and confusing subscribers by conducting weekly and monthly EAS tests on every channel, XM asks that the Commission afford it the flexibility to test its capability of receiving and distributing EAS messages by conducting yearly, monthly, and weekly tests in the following manner: (i) a yearly test that will be transmitted on every channel simultaneously;[14] and (ii) weekly and monthly tests that will be distributed on those XM's Instant Traffic, Weather & Alert channels on which XM has informed subscribers that it will offer state and local EAS messages.[15] Taken together, these yearly, weekly, and monthly

---

[12] Although the Commission's rules allow XM to choose the day and time to transmit a weekly test, it would be virtually impossible for XM to choose times to conduct a test when programming would not be significantly interrupted. The situation is far worse for monthly tests, where XM must transmit an EAS test within 60 minutes after receiving the test signal from the station it monitors. *See* 47 C.F.R. § 11.61(a)(1). In that case, there is no planning XM can reasonably conduct to minimize interruptions to subscribers.

[13] The Commission has previously recognized the burdens EAS tests impose on listeners and viewers. *See Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, Report and Order and Further Notice of Proposed Rulemaking*, 10 FCC Rcd 1786, ¶¶ 107-108 (1994) ("*1994 EAS Order*").

[14] Similar to the existing weekly test, XM proposes that this yearly test occur at a random day and time of XM's choosing. 47 C.F.R. § 11.61(a)(2).

[15] The monthly test will originate directly from the appropriate Local or State Primary source for the region covered by the Instant Traffic, Weather & Alert channel. 47 C.F.R. § 11.61(a)(1).

tests strike the proper balance between ensuring that XM's EAS equipment remains fully functional while avoiding overly burdening and confusing XM's subscribers. While the yearly test will result in the same interruptions to subscribers noted above, XM believes that performing this test once per year will ensure that XM is capable of both receiving and transmitting the national level EAS message on every channel while not severely disrupting programming or confusing subscribers. XM will also conduct weekly and monthly EAS tests on those XM Instant Traffic, Weather & Alert channels on which XM has informed subscribers that it will offer state and local EAS messages. This will ensure that XM is capable of receiving and transmitting state and local EAS alerts while avoiding confusing subscribers and disrupting programming. Unlike the national level EAS alert, state and local EAS alerts are relatively common. While satellite radio subscribers would not expect to receive EAS alerts on all XM channels, they will expect to hear alerts on those Instant Traffic, Weather & Alert channels on which XM has informed subscribers that it will offer state and local EAS messages.

EAS codes and attention signals. While XM intends to transmit EAS codes and attention signals, XM asks that the Commission clarify that the transmission of these EAS codes and attention signals is only required to the extent technologically feasible. XM's Instant Traffic, Weather & Alert channels consist of only voice communications and use vocoder technology to compress the data transmitted to conserve bandwidth. Accordingly, the EAS codes and attention signals transmitted over these channels may not be audible or will sound inferior to codes and alerting signals transmitted by broadcast stations and cable systems.[16] To be sure, the EAS codes and attention signals will be audible on all channels during a national level EAS alert or

[16] XM's Instant Traffic, Weather & Alert channels are not monitored by other EAS participants, thus XM's limited ability to transmit codes and signals on these channels will have no adverse effect on other EAS participants.

test;[17] the relief requested here applies only to state and local EAS alerts transmitted on those Instant Traffic, Weather, and Alert channels on which XM has informed subscribers that it will offer state and local EAS messages.[18] XM recognizes the value of codes and signals in alerting subscribers to an emergency message. To that end, XM is currently exploring ways in which it can transmit the functional equivalent of EAS codes and alerting signals from the perspective of listeners. XM seeks clarification, however, that its limited ability to transmit EAS codes and alerting signals on these few channels does not violate the Commission's rules requiring EAS participants to transmit EAS codes and alerting signals.

Conclusion

In light of the foregoing, XM urges the Commission to act consistently with the views expressed herein.

/s/William J. Bailey
William J. Bailey
Senior Vice President,
Regulatory and Government Affairs
XM RADIO INC.
1500 Eckington Place, N.E.
Washington, D.C. 20002
(202) 380-4000

/s/David S. Konczal
Bruce D. Jacobs
David S. Konczal
PILLSBURY WINTHROP SHAW PITTMAN LLP
2300 N Street, N.W.
Washington, D.C. 20037
(202) 663-8000

December 27, 2005

[17] In the event of a national level alert or test, XM is equipped with a manual switching device that can force every XM channel to the emergency audio alert, which will include transmission of codes and alerting signals on every channel.

[18] XM notes that the Commission's rules do not require all EAS participants to transmit EAS codes and alerting signals. *See* 47 C.F.R. § 11.51(e)